



February 15, 2001

HOUSE BILL No. 1628

DIGEST OF HB 1628 (Updated February 13, 2001 12:07 PM - DI 106)

Citations Affected: IC 29-2; IC 34-30.

Synopsis: Anatomical gifts. Requires a family to honor a decedent's anatomical gift donation and provides that the decedent's family does not have legal standing to refuse to honor the wishes of the decedent to make an anatomical gift donation unless the anatomical gift was revoked by the decedent before the decedent's death or by a guardian in the manner prescribed by law. Requires a hospital, surgeon, or physician to honor a decedent's anatomical gift donation and inform the decedent's family of the individual's donation. Provides immunity from civil liability to a physician who follows a donor's anatomical gift directive. Makes a conforming amendment.

Effective: July 1, 2001.

Welch, Budak, Grubb

January 17, 2001, read first time and referred to Committee on Judiciary.
February 14, 2001, amended, reported — Do Pass.

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HB 1628—LS 7300/DI 104+



February 15, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1628

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 29-2-16-2, AS AMENDED BY P.L.29-2000,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 2. (a) Any individual:
4 (1) of sound mind and eighteen (18) years of age or more; or
5 (2) less than eighteen (18) years of age who obtains the consent
6 of the individual's parent or guardian as required under
7 IC 9-24-17-7;
8 may give all or any part of the individual's body for any purpose
9 specified in section 3 of this chapter, the gift to take effect upon death.
10 An individual may limit a gift made under this chapter or IC 9-24-17
11 to one (1) of the purposes specified in section 3 of this chapter. An
12 individual may refuse to make a gift of all or part of the individual's
13 body.
14 (b) **Except as provided in section 2.5 of this chapter**, any of the
15 following individuals, in order of priority stated when individuals in
16 prior classes are not available at the time of death, and in the absence
17 of actual notice of contrary indications by the decedent or actual notice

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of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3 of this chapter:

- (1) the spouse;
- (2) a son or daughter, at least eighteen (18) years of age;
- (3) either parent;
- (4) a grandparent;
- (5) a brother or sister, at least eighteen (18) years of age; or
- (6) a guardian of the person of the decedent at the time of his death.

A gift made by an individual under this subsection may be revoked by an individual in the same or prior class as the individual making the gift, if the individual doing the removal of an organ receives notice of the revocation before the organ is removed. A failure to make a gift under this subsection is not an objection to the making of a gift, and an individual in a subsequent class may make a gift under this subsection.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class ~~if~~ is opposed by a member of the same or a prior class, the donee shall not accept the gift. The individuals authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7(d) of this chapter.

SECTION 2. IC 29-2-16-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2.5. (a) This section applies if:**

(1) a donor makes an anatomical gift under this chapter or IC 9-24-17; and

(2) the gift is not revoked by:

(A) the donor before the donor's death; or

(B) a guardian under section 11 of this chapter.

(b) The individuals described in section 2(b) of this chapter have no legal standing or authority to:

(1) modify a deceased donor's gift of any part of the donor's body as described in section 2 of this chapter; or

(2) prevent the anatomical gift from being made.

(c) A health care provider shall follow a donor's anatomical gift directive under this chapter or IC 9-24-17, unless the gift has been revoked.



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(d) The physician who tends the donor at the time of the donor's death, or, if none, the physician who certifies the donor's death, shall ensure that:

(1) the individuals set forth in section 2(b) of this chapter are informed of the deceased donor's anatomical gift donation; and

(2) the deceased donor's gift is honored.

(e) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

SECTION 3. IC 29-2-16-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4.5. (a) A coroner may release and permit the removal of a part from a body within the coroner's custody, for transplantation or therapy only, if all of the following occur:

(1) The coroner receives a request for a part from a hospital, physician, surgeon, or procurement organization.

(2) The coroner makes a reasonable effort, taking into account the useful life of a part, to locate and examine the decedent's medical records and inform individuals listed in section 2(b) of this chapter of their option to make or object to making a gift under this chapter.

(3) The coroner does not know of a refusal or contrary indication by the decedent or an objection by an individual having priority to act as listed in section 2(b) of this chapter.

(4) The removal will be by:

(A) a physician licensed under IC 25-22.5; or

(B) in the case of removal of an eye or part of an eye, by an individual described in section 4(e) of this chapter **and under IC 36-2-14-19.**

(5) The removal will not interfere with any autopsy or investigation.

(6) The removal will be in accordance with accepted medical standards.

(7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the coroner, the medical examiner may release and permit the removal of any part from a body in the medical examiner's custody for transplantation or therapy if the requirements of subsection (a) are met.

(c) A person under this section who releases or permits the removal of a part shall maintain a permanent record of the name of the decedent, the individual making the request, the date and purpose of

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1 the request, the body part requested, and the person to whom it was
2 released.

3 SECTION 4. IC 34-30-2-117.5 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2001]: **Sec. 117.5. IC 29-2-16-2.5 (Concerning**
6 **health care provider immunity and anatomical gifts).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1628, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 40, delete "hospital, surgeon, or physician" and insert **"health care provider"**.

Page 2, line 40, after "shall" delete "honor" and insert **"follow"**.

Page 2, line 40, delete "deceased".

Page 2, line 41, after "gift" insert **"directive"**.

Page 3, between lines 7 and 8, begin a new paragraph and insert:

"(e) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17."

Page 3, after line 41, begin a new paragraph and insert:

"SECTION 4. IC 34-30-2-117.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 117.5. IC 29-2-16-2.5 (Concerning health care provider immunity and anatomical gifts)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1628 as introduced.)

STURTZ, Chair

Committee Vote: yeas 10, nays 0.

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